

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 886 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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CHANDRASHANKAR A DAVE

Versus

CHANDRAKANT B VAIDYA

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Appearance:

MR BHARAT J SHELAT for Petitioner  
Mr.C.J. Vin for Respondent No. 1

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CORAM : MR.JUSTICE S.D.SHAH  
Date of decision: 19/06/97

ORAL JUDGEMENT

1. This Civil Revision Application filed by the petitioner tenant is directed against the judgment and order of the learned Joint District Judge, Surat, below Exhibit 13 dated 21st of April, 1990. It appears that Chandrashankar Ambalal Dave, the present petitioner, filed Regular Civil Suit No. 826 of 1984 in the trial court on 30th April, 1984 and he applied for injunction

by Exhibit-5. Initially, ex parte injunction was granted, which came to be vacated on 2nd of June 1984. Against the said order, appeal was preferred to the District Court being Appeal No. 105 of 1984, wherein an order was passed on 4th of July, 1984 directing the parties to maintain status quo. By judgment and order dated 12th July, 1984, the said appeal was allowed and the order of Second Jt. Civil Judge, Senior Division, Surat, vacating the interim injunction was set aside and the initial order of ad interim injunction which was granted on Exhibit-5 was confirmed. It appears that the respondent sub-tenant committed the breach of the order passed by the appellate court and therefore an application was made for taking appropriate action against him for committing breach of the order of the court in the District Court. In the District Court, the affidavits were filed by the parties and the other party was called upon to cross-examine the deponents of the affidavits and to that extent, the respondent has submitted to the jurisdiction of the District Court. However, he thereafter, gave an application at Exhibit 13 and contended that the order of the trial court has merged into the order of District Court, and hence the application for breach of the order could be filed only before the trial court and not before the District Court. The application was in fact called upon the court to decide the issue of jurisdiction as according to the applicant the District Court will be functus officio once the Misc. Civil Appeal was allowed and any application under Order 39 Rule 2A for the breach of the order of injunction, shall thereafter lie before the trial court. The Joint District Judge took the view that the application which was filed before the District Court making grievance about the breach of the order of injunction, being Misc. Civil Appeal No. 18 of 1985 shall have to be filed before the trial court and the trial court shall take appropriate action. It is against such order the present Civil Revision Application is filed.

2. Mr. Bharat J. Shelat, learned Counsel for the petitioner has vehemently submitted before this court that the tenant having submitted to the jurisdiction of the District Court while cross-examining the deponents of affidavits, it does not lie in his mouth now to contend before the District Court that the District Court has no jurisdiction and that he was barred by the doctrine of estoppel. On the other hand, Mr. C.J. Vin, learned counsel appearing for the opponent has submitted that doctrine of merger would apply and the order of the trial court would merge into the order of the District Court

and once the order of injunction is granted by the District Court, the matter would end and parties shall have to comply with the order of the District Court. If any breach of such order is thereafter committed, the remedy is to move the trial court because the order of the trial court has merged into the order of the District Court and for all purposes, it shall have to be treated as the order of the trial court.

3. From the aforesaid rival contentions, it appears that a wider question of effect on to the jurisdiction of the court or of the applicability of doctrine of merger even to the interlocutory order, would not be gone into by this court as in the opinion of this court interest of justice can be met by directing the District Court to send the record of the Misc. Civil Appeal filed before it along with the affidavits and the cross-examination of the deponents of the affidavits to the trial court and the trial court can be directed to proceed further with such application and to decide the same expeditiously preferably within a period of two months from the date of the receipt of the writ of this Court.

4. In view of the aforesaid, this is not a fit case for interference of this Court at this stage except directing the District Court, Surat to send the entire proceeding of Misc. Civil appeal No. 18 of 1985 along with affidavits and the cross-examinations of the deponents of the affidavits to the Second Joint Civil Judge, Senior Division, Surat and trial court is directed to proceed with such application for contempt under Order 39 Rule 2A of the Code of Civil Procedure inaccordance with law. The trial court shall decide such application expeditiously. The CRA is partially allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent only. Writ of this order to be sent down to the District Court as well as to the trial court within a period of fortnight from today.

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